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Dated: December 11, 2003

Signature:

Nabeela R. McMillian

Docket No.: 27636/39666  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Re Patent Application of: *Qin et al.*

Application No.: 10/722,371

Group Art Unit: Not Yet Assigned

Filed: November 24, 2003

Examiner: Not Yet Assigned

For: **METHODS OF PRODUCING AND  
PURIFYING RECOMBINANT ALPHA-L-  
IDURONIDASE**

**PETITION TO ACCORD PROPER FILING DATE OF APPLICATION**

Deputy Commissioner for Patents  
Examination Policy  
Office of Patent Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

The Applicants file this petition to request correction of the filing date accorded the above referenced application.

**I. Statement of Facts**

1. The referenced application was filed November 24, 2003. Pursuant to 37 C.F.R. §1.10, Applicants filed the Application and related papers using "Express Mail" with the U.S. Postal Service, under Express Mail label EV 233 435 399 US.

2. A copy of the original Express Mail label marked by U.S. Postal Service personnel is attached as **Exhibit A**. This copy of the label shows the date of receipt of the application by the U.S. Postal Service was 11/24/2003 as evidenced by the entry in box entitled "Date In."

12/17/2003 BABRAHAL 00000154 10722371

01 FC:1460

130.00 OP

3. The Express Mail label number was included on the utility patent application transmittal, the fee transmittal sheet, and the cover page of the patent application. Each of these pages as filed are attached as **Exhibit B**.

4. Attached as **Exhibit C** is a printout from the U.S. Postal Service Track and Confirm website, which also indicates that the "ACCEPTANCE" date of the documents shipped under Express Mail label number EV 233 435 399 US was November 24, 2003.

5. Nabeela R. McMillian directly deposited the application papers with an employee of the United States Postal Service. (See attached declaration from Nabeela R. McMillian, **Exhibit D**).

6. Along with the filing paper, Applicants submitted a postcard itemizing the papers transmitted therewith. The postcard was returned, acknowledging receipt of the papers by the United States Patent and Trademark Office and indicating the serial number and filing date accorded to the application. (Attached as **Exhibit E**). This returned postcard was received by the undersigned representatives on December 11, 2003.

7. Nabeela R. McMillian became aware that the wrong date was accorded by reviewing the returned postcard on December 11, 2003. The returned postcard indicates that the Serial No. accorded the application is 10/722,371 and indicates that the filing date is "112503," which denotes a filing date of November 25, 2003.

## **II. Legal Authority upon Which Instant Petition is based**

The statutory authority for the granting of a filing date based on the date of deposit for correspondence sent by "Express Mail" and received by the Office is found in 35 U.S.C. §21(a). The Commissioner may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service.

37 C.F.R. §1.10(a) provides that any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to

Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS, which is shown by the "date-in" on the "Express Mail" mailing label. According to 37 C.F.R. §1.10(b), to be accorded the Express Mailing date as the date of deposit, the correspondence should be directly deposited with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked.

37 C.F.R. §1.10(c) authorizes petition to the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label if that person can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail," provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

### **III. Requested Relief and Reasons Relief Should be Granted**

This petition is filed, pursuant to §1.10, to obtain correction of the filing date for the instant application to date of deposit of the application in "Express Mail" rather than the date accorded to the application by the Office.

The instant application was filed on November 24, 2003 (factual paragraph 1). Applicants used the "Express Mail" procedures sanctioned in 37 C.F.R. §1.10 to file the application, and filed the application under Express Mail Label No. EV 233 435 933 US (factual paragraphs 2-4). Pursuant to 37 C.F.R. §1.10(c)(3), a true copy of the Express Mail Label No. EV 233 435 933 US is attached as **Exhibit A**. The number of this Express Mail

label was affixed to each of the documents that was filed with the application (factual paragraph 3).

The application was directly deposited with an employee of the USPS at the Downtown Chicago Main Post Office by Nabeela R. McMillian on November 24, 2003 (factual paragraph 5). The USPS employee marked the “date in” box of the Express Mail label as “11/24/03”

On December 11, 2003, the undersigned representative received the returned copy of the postcard that was enclosed with the application papers acknowledging receipt of the Application papers. On December 11, 2003, the undersigned representative reviewed the postcard and noted that the filing date accorded to the instant application was November 25, 2003, and not the Express Mailing date, which was November 24, 2003. Thus, the undersigned representative has become aware that the Office will accord a filing date other than the USPS Express Mail deposit date. The instant petition is being filed promptly on December 11, 2003, and is believed to be timely filed within the requirements of 37 C.F.R. §1.10(c)(1).

In view of the above factual assertions and explanation, Applicants assert that the correct filing date for the instant application is November 24, 2003 and Applicants petition the Deputy Commissioner for Patents Examination Policy to review the instant matter and accord the Express Mailing date of November 24, 2003 as the filing date of the instant application. A petition fee in the amount of \$130.00 is attached.

#### **IV. Conclusions**

Applicants believe that the facts show that the filing date of the instant application is November 24, 2003 and not November 25, 2003 as listed on the returned receipt postcard. Therefore, Applicants request that Deputy Commissioner for Patents Examination Policy grant this petition and correct the records at the United States Patent and Trademark Office to reflect the correct filing date of the application. No additional fees are believed to be due with the filing of a petition, however, should a fee be deemed necessary in

**Application No: 10/722,371**  
**Petition Pursuant to 37 C.F.R. §1.10(c)**  
**To review and correct filing date of application**

**Docket No.: 30610/30009A**

connection with the filing of this petition the Commissioner is hereby authorized to deduct such a fee from Marshall, Gerstein and Borun LLP account number 13-2855.

Dated: December 11, 2003

Respectfully submitted,

By 

Nabeela R. McMillian

Registration No.: 43,363

MARSHALL, GERSTEIN & BORUN LLP

233 S. Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorneys for Applicants



EV 233435399 US

Customer Copy

Label 11-F June 2002

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MAIL**

UNITED STATES POSTAL SERVICE®

Post Office To Addressee

## ORIGIN (POSTAL USE ONLY)

PO ZIP Code 60617	Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date In 11-24-03	Postage \$17.85	
Time In 11:41 AM	Military <input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Return Receipt Fee
Weight 1 lbs. 8 ozs.	Int'l Alpha Country Code	COD Fee Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials [Signature]	Total Postage & Fees \$17.85

## DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Date	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.		
NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday		
Customer Signature		

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Express Mail Corporate Acct! No.		
FROM: (PLEASE PRINT) MARSHALL GERSTEIN & BORUN 233 S WACKER DR STE 6300 CHICAGO IL 60606-6357 30610/30009A NRM	TO: (PLEASE PRINT) Mail Stop Patent Application Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450	PHONE

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<b>UTILITY PATENT APPLICATION TRANSMITTAL</b>  <i>(Only for new nonprovisional applications under 37 CFR 1.53(b))</i>	Attorney Docket No.	30610/30009A
	First Inventor	Minmin Qin
	Title	METHODS OF PRODUCING AND PURIFYING RECOMBINANT $\alpha$ -L IDURONIDASE
	Express Mail Label No.	EV 233435399 US

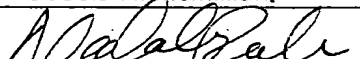
<b>APPLICATION ELEMENTS</b>  See MPEP chapter 600 concerning utility patent application contents.	<b>ADDRESS TO:</b> Mail Stop Patent Application Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
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1. <input checked="" type="checkbox"/> Fee Transmittal Form (e.g., PTO/SB/17) <i>(Submit an original, and a duplicate for fee processing)</i> 2. <input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. 3. <input checked="" type="checkbox"/> Specification [Total Pages <b>52</b> ] <i>(preferred arrangement set forth below)</i> - Descriptive title of the invention - Cross Reference to Related Applications - Reference to sequence listing, a table, or a computer program listing appendix - Background of the Invention - Brief Summary of the Invention - Brief Description of the Drawings (if filed) - Detailed Description - Claim(s) - Abstract of the Disclosure - Sequence Listing (Paper) 4. <input type="checkbox"/> Drawing(s) (35 U.S.C. 113) [Total Sheets <b>20</b> ] 5. Oath or Declaration [Total Sheets <input ]<br="" type="checkbox"/> a. <input type="checkbox"/> Newly executed (original or copy) b. <input type="checkbox"/> Copy from a prior application (37 CFR 1.63(d)) <i>(for continuation/divisional with Box 18 completed)</i> i. <input type="checkbox"/> <b>DELETION OF INVENTOR(S)</b> Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b). 6. <input type="checkbox"/> Application Data Sheet. See 37 CFR 1.76	7. <input type="checkbox"/> CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix) 8. Nucleotide and/or Amino Acid Sequence Submission <i>(if applicable, all necessary)</i> a. <input type="checkbox"/> Computer Readable Form (CRF) b. Specification Sequence Listing on: i. <input type="checkbox"/> CD-ROM or CD-R (2 copies); or ii. <input checked="" type="checkbox"/> Paper c. <input type="checkbox"/> Statements verifying identity of above copies <b>ACCOMPANYING APPLICATIONS PARTS</b> 9. <input type="checkbox"/> Assignment Papers (cover sheet & document(s)) 10. <input type="checkbox"/> 37 CFR 3.73(b) Statement <input type="checkbox"/> Power of <i>(when there is an assignee)</i> Attorney 11. <input type="checkbox"/> English Translation Document (if applicable) 12. <input type="checkbox"/> Information Disclosure <input type="checkbox"/> Copies of IDS Statement (IDS)/PTO-1449 Citations 13. <input checked="" type="checkbox"/> Preliminary Amendment 14. <input checked="" type="checkbox"/> Return Receipt Postcard (MPEP 503) <i>(Should be specifically itemized)</i> 15. <input type="checkbox"/> Certified Copy of Priority Document(s) <i>(if foreign priority is claimed)</i> 16. <input type="checkbox"/> Nonpublication Request under 35 U.S.C. 122 (b)(2)(B)(i). Applicant must attach form PTO/SB/35 or its equivalent. 17. <input type="checkbox"/> Other:
---	---

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76:

☒ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) of prior application No.: 09/993,038Prior application information: Examiner Munjunath N. Rao Art Unit: 1652For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS					
<input checked="" type="checkbox"/> Customer Number or Bar Code Label		04743		or <input checked="" type="checkbox"/> Correspondence address below	
Name	MARSHALL, GERSTEIN & BORUN Nabeela R. McMillian				
Address	233 S. Wacker Drive, Suite 6300 Sears Tower				
City	Chicago	State	IL	Zip Code	60606-6357
Country	US	Telephone	(312) 474-6300	Fax	(312) 474-0448

Name (Print/Type)	Nabeela R. McMillian	Registration No. (Attorney/Agent)	43,363
Signature		Date	November 24, 2003

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Dated: November 24, 2003

Signature: 

(Nabeela R. McMillian)



# FEE TRANSMITTAL for FY 2003

Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) NONE

## Complete if Known

Application Number Not Yet Assigned  
Filing Date November 24, 2003  
First Named Inventor Minmin Qin  
Examiner Name Not Yet Assigned  
Group Art Unit 1652  
Attorney Docket No. 30610/30009A

## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ Other ☒ None

☐ Deposit Account

Deposit Account Number

13-2855

Deposit Account Name

MARSHALL, GERSTEIN & BORUN

The Commissioner is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments  
☐ Charge any additional fee(s) under 37 C.F.R. §§ 1.16 or 1.17 during the pendency of this application  
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

THIS APPLICATION IS BEING FILED WITHOUT PAYMENT OF FILING FEE. APPLICANTS REQUEST A NOTIFICATION TO FILE MISSING PARTS AT WHICH POINT THE FEE WILL BE FURNISHED

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Description	Fee Paid
		1001	750	Utility filing fee	375
		1002	320	Design filing fee	
		1003	530	Plant filing fee	
		1004	750	Reissue filing fee	
		1005	160	Provisional filing fee	
SUBTOTAL (1)					375.00

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
7	-20** = 0	x	=
Independent Claims	1	-3** = 0	x
Multiple Dependent			

Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Description
		1202	18	Claims in excess of 20
		1201	84	Independent claims in excess of 3
		1203	280	Multiple dependent claim, if not paid
		1204	84	** Reissue independent claims over original patent
		1205	18	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) \$375.00

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	410	2252	205	Extension for reply within second month	
1253	930	2253	465	Extension for reply within third month	
1254	1,450	2254	725	Extension for reply within fourth month	
1255	1,970	2255	985	Extension for reply within fifth month	
1401	320	2401	160	Notice of Appeal	
1402	320	2402	160	Filing a brief in support of an appeal	
1403	280	2403	140	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,300	2453	650	Petition to revive - unintentional	
1501	1,300	2501	650	Utility issue fee (or reissue)	
1502	470	2502	235	Design issue fee	
1503	630	2503	315	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	750	2809	375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	750	2810	375	For each additional invention to be examined (37CFR 1.129(b))	
1801	750	2801	375	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
Other fee (specify)					
1614; Claims - extra independent (over three);					
1615; Claims - extra total (over 20); Claims -					
1616 multiple dependent					
*Reduced by Basic Filing Fee Paid					
SUBTOTAL (3) (\$)					

## SUBMITTED BY

Name (Print/Type) Nabeela R. McMillian

Registration No. (Attorney/Agent) 43,363

## Complete (if applicable)

Telephone (312) 474-6300

Signature

*Nabeela R. McMillian*

Date

November 24, 2003

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Dated: November 24, 2003

Signature:

*Nabeela R. McMillian*

(Nabeela R. McMillian)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
APPLICATION FOR UNITED STATES LETTERS PATENT

Title:

METHODS OF PRODUCING AND PURIFYING RECOMBINANT  $\alpha$ -L IDURONIDASE

Inventors:

Minmin Qin	Pleasanton, CA
Wai-Pan Chan	Castro Valley, CA
Lin Chen	San Francisco, CA
Paul A. Fitzpatrick	Albany, CA
John M. Henstrand	Davis, CA
Dan J. Wendt	Walnut Creek, CA
Gary N. Zecherle	Novato, CA
Christopher M. Starr	Sonoma, CA
Emil D. Kakkis	Novato, CA

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Dated: November 24, 2003

Signature: 

(Nabeela R. McMillian)



## Track & Confirm

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Your item was delivered at 10:15 am on November 26, 2003 in ALEXANDRIA, VA 22313 to PATENT OFFICE. The item was signed for by R REGISTER.

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- ARRIVAL AT UNIT, November 26, 2003, 9:03 am, DULLES, VA 20102
- ENROUTE, November 25, 2003, 12:25 am, CHICAGO, IL 60607
- ACCEPTANCE, November 24, 2003, 11:47 pm, CHICAGO, IL 60607

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Qin *et al.*

Serial No: 10/722,371

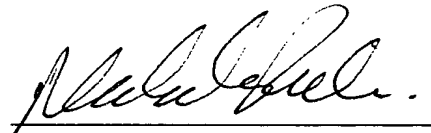
Filed: November 24, 2003

Title: METHODS OF PRODUCING  
AND PURIFYING RECOMBINANT  
ALPHA-L-IDURONIDASE

Group Art Unit: Not Yet Assigned

Examiner: Not Yet Assigned

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Examination Policy, Office of Patent  
Legal Administration, P.O. Box 1450,  
Alexandria, VA 22313-1450  
on December 11, 2003



Nabeela R. McMillian  
Reg. No. 43,363  
Attorney for Applicants

**DECLARATION OF NABEELA R. MCMILLIAN TO PROVIDE FACTS RELATING  
TO DEPOSIT OF APPLICATION UNDER EXPRESS MAIL LABEL EV 233 435 399 US**

Deputy Commissioner for  
Patents Examination Policy  
Office of Patent Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Nabeela R. McMillian, do hereby declare and state as follows:

1. I am an attorney of record for the above-referenced application.
2. I filed the above-reference application on November 24, 2003 and directly deposited the application with an employee of the United States Postal Service (USPS) at the United States Post Office located at 433, West Harrison Street, IL 60607.


3. I filed the application by Express Mail and used a "Post Office to Addressee" Express Mail label to do so. The number of that label was EV 233 435 399 US. I included the Express Mail label number on the utility patent application transmittal, the fee transmittal sheet, and the specification cover page that was filed with the application. The Express Mail label number also was typed onto a stamped postcard containing the address of the Applicants' representatives.

4. The USPS employee who took delivery of the Express Mail package containing the application papers handwrote the date of receipt of the package into the "date in" box on the Express mail label and returned to me the Customer Copy of the Express Mail Label. A copy of that label is being attached to the petition that accompanies this declaration, and indicates that the date of receipt was "11/24/03."

5. Our offices received the postcard enclosed with the application returned from the United States Patent and Trademark Office acknowledging receipt of the application papers on December 11, 2003. I reviewed the postcard on December 11, 2003.

6. I further declare that all statements made herein of my own knowledge are true, that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both (18 U.S.C. § 1001), and may jeopardize the validity of the application or any patent issuing thereon.

Date: December 11, 2003

  
\_\_\_\_\_  
Nabeela R. McMillian



RECEIVED MARSHALL, GERSTEIN & BORUN LLP

DEC 11 2003

6300 SEARS TOWER

233 SOUTH WACKER DRIVE

CHICAGO, ILLINOIS 60606-6357

17497 U.S. PTO  
10/722371

MARSHALL GERSTEIN



USPS 2002 recycled



30610/30009A

11/24/03

The Patent Office is hereby requested to acknowledge receipt  
of the following papers by stamping and returning this card.

WITH SERIAL NO. AND FILING DATE:

Minmin Qin et al.

"Methods of Producing and Purifying Recombinant  
a-L Iduronidase"

Patent Application Transmittal under 37 CFR §1.53  
(& Copy); Title; Specification 41 pages;

claims 2 pages; Abstract; Drawings 10 pages;  
sequence listing 7 pages; Preliminary Amendment and  
Request for Notification to File Missing Parts.

w/certificate of Express Mail dated November 24, 2003,  
Label No. EV233435399US.